

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 \* \* \*

9 BOARD OF TRUSTEES OF THE  
10 TEAMSTERS LOCAL 631 SECURITY  
11 FUND FOR SOUTHERN NEVADA, et  
12 al.,

13 Plaintiffs,

14 v.

15 INFINITY I & D, INC.,

16 Defendant.

Case No. 2:19-cv-00685-GMN-BNW

**REPORT AND RECOMMENDATION**

17 Presently before this Court is a Motion for Default Judgment made by Plaintiffs Boards of  
18 Trustees of the Teamsters Local 631 Security Fund for Southern Nevada and Teamsters  
19 Convention Industry Training Fund (collectively referred to as “Trust Funds” or “Plaintiffs”)  
20 against Defendant Infinity I&D, Inc. (“Infinity”). (ECF No. 9.) No opposition has been filed.

21 **I. BACKGROUND**

22 Infinity employed individuals who performed work covered by a collective bargaining  
23 agreement (“CBA”) with the International Brotherhood of Teamsters Local 631 (“Union”). (*Id.*)  
24 Plaintiffs comprise ERISA<sup>1</sup> funds that provide benefits to Infinity’s covered employees. (*Id.*)  
25 Governing documents referenced in the CBA require Infinity to provide the Trust Funds’ auditor  
26 documentation to conduct a contract compliance review to ensure timely contributions on behalf  
27

28 <sup>1</sup> Employee Retirement Income Security Act of 1974

1 of each employee covered by the CBA, as required by 29 U.S.C. § 1145. (*Id.*; *see also* ECF No.  
 2 9-1 (Humes Aff.), Exhibit 1, ¶¶ 3-4; Exhibit 2, Art III § 1.) In the event of non-compliance by  
 3 Infinity, Plaintiffs are permitted to presume annual delinquent contributions in the amount of  
 4 \$100,000.00. (*Id.*) Additionally, if Infinity is delinquent, it must pay 18% interest on those  
 5 contributions. (*Id.* at Exhibit 1 ¶ 8; Exhibit 2, Amend. No. 2; Exhibit 3, Amend. No. 3; Exhibit 6  
 6 § 2.) Liquidated damages are equal to 20% of the delinquent contributions or the interest due at  
 7 the Trust rate (whichever is higher). (*Id.*) Audit costs, legal fees, and costs incurred attempting to  
 8 collect the delinquency can also be recovered. (*Id.* at Exhibit 6 § 2(E).) Lastly, the agreement  
 9 provides for the addition of \$5,000 in legal fees to be added to a default judgment for anticipated  
 10 future costs of collection. (*Id.* at § 5(H).)

11 Plaintiffs represent they repeatedly requested that Infinity make its books and records for  
 12 the period of July 2016 to September 2018 available for an audit, as required by ERISA and the  
 13 CBA. (*Id.*) Plaintiffs also allege Infinity failed to make its books and records available and to  
 14 remit employee benefit contributions for that period. (*Id.*)

15 On April 19, 2019, Plaintiffs filed a complaint under ERISA, 29 U.S.C. §§ 1001-1500,  
 16 against Infinity. (ECF No. 1.) Plaintiffs' Complaint requests equitable relief by asking the court to  
 17 compel Infinity to make available necessary documentation to permit the Trust Funds to perform  
 18 an audit. (*Id.*) Plaintiffs also claim Defendant Infinity is liable for unpaid contributions. (*Id.*)  
 19 Defendant Infinity was served on April 30, 2019. (ECF No. 6.) Defendant did not answer.  
 20 Plaintiffs filed for an entry of default on May 24, 2019. (ECF No. 7.) The Clerk of Court entered  
 21 default on May 28, 2019. (ECF No. 8.)

22 Plaintiffs now request entry of Default Judgment against Defendant Infinity in the amount  
 23 of \$411,957.00. (ECF No. 9.) This Motion was referred to the undersigned on October 2, 2019.

## 24 **II. ANALYSIS**

25 Under Federal Rule of Civil Procedure 55(b)(2), the Court may enter default judgment if  
 26 the Clerk previously has entered default based on the defendants' failure to defend. After entry of  
 27 default, the factual allegations in the complaint are taken as true. *Geddes v. United Fin. Grp.*, 559  
 28 F.2d 557, 560 (9th Cir. 1977). Whether to grant a default judgment lies within the Court's

1 discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). In deciding whether to enter a  
2 default judgment, the Court considers factors such as:

3 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's  
4 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at  
5 stake in the action; (5) the possibility of a dispute concerning material facts; (6)  
6 whether the default was due to excusable neglect, and (7) the strong policy  
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

7 *Id.* at 1471-72. A default judgment generally is disfavored because "[c]ases should be decided  
8 upon their merits whenever reasonably possible." *Id.* at 1472.

9 Default judgment is appropriate under the circumstances in this case. Plaintiff asserts  
10 Infinity was obligated to make available its book and records to Plaintiffs and remit employee  
11 benefit contributions under its agreements and 29 U.S.C. § 1027. Plaintiffs requested these  
12 records. (ECF No. 9-1 at Exhibit 1, ¶¶ 8-11; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10.)  
13 According to Plaintiffs, Infinity never provided them. (ECF No. 9 at 4.) Default has been entered  
14 against Infinity, so each of these allegations are deemed admitted. *Geddes*, 559 F.2d at 560. The  
15 Trust Funds will have no recourse against Infinity unless default judgment is granted. As a result,  
16 the first *Eitel* factor favors the entry of default judgment.

17 The complaint sufficiently sets forth Plaintiffs claims under the liberal pleading standard  
18 in Rule 8 of the Federal Rules of Civil Procedure. Substantively, nothing in the record indicates  
19 that Infinity met its obligations and provided the requested documents. In fact, there is evidence  
20 to the contrary. As a result, the assumed delinquent contributions provided for in the  
21 agreement are to be used for purposes of calculating the amount owed. In turn, the agreement  
22 allows the Plaintiffs to assume that, for each year covered by the attempted audit, \$100,000 is  
23 owed, or \$8,333 per month (\$100,000 divided by 12 months). (ECF No. 9-1 at Exhibit 6 § 4L.) In  
24 this case, the period in question covers July 1, 2016, through September 30, 2018, or 27 months.  
25 (ECF No. 9 at 5.) The contributions due equal \$224,991 (\$8,333 x 27 = \$224,991). In turn, 18%  
26 interest on all delinquent contribution amounts equals \$89,034. (*Id.* at 6.) Per the agreement,  
27 liquidated damages are either 20% of the delinquent contributions or the amount of interest,  
28 whichever is higher. *See also* 29 U.S.C. § 1132(g)(2)(c)(ii). Here, interest is higher, so the

1 liquidated damages are \$89,034. Legal fees of \$3,898 are due. (ECF No. 9 at 6-7.) Lastly, the  
2 agreement requires an additional \$5,000 in attorney's fees and costs in any instance where the  
3 Trust Funds seek a delinquency judgment by default judgment. (*Id.* at Exhibit 6, §5(H).) The total  
4 amount Defendant Infinity owes Plaintiffs is \$411,957.00. (ECF No. 9 at 7.)

5 In addition to the agreement between the parties, Congress mandates the award of  
6 damages in a successful ERISA case. Specifically, 29 U.S.C. § 1132(g)(2) states that, in such a  
7 case, the Court shall award (1) unpaid contributions (§ 1132(g)(2)(A)); (2) interest on the unpaid  
8 contributions at the rate provided by the plaintiff's plan documents (§ 1132(g)(2)(B)) and the  
9 unnumbered last paragraph of § 1132(g)); (3) liquidated damages not in excess of 20% or the  
10 interest amount, whichever is higher (§1132(g)(2)(C)(ii)); (4) reasonable attorney's fees and costs  
11 of the action (§ 1132(g)(2)(D)); and (5) such other legal or equitable relief as the court determines  
12 (§ 1132(g)(2)(E)).

13 Further, it is unlikely that Defendant Infinity will dispute any issue of material fact, as it  
14 has not made an appearance in this case. Nor does it appear that default was the result of  
15 excusable neglect. Infinity was provided notice several times that Plaintiffs would initiate a  
16 lawsuit if they did not respond. Moreover, Infinity corresponded with counsel for Plaintiffs  
17 regarding this matter. (ECF No. 9-9.) Finally, despite the general policy that cases "should be  
18 decided on the merits whenever reasonably possible," *Eitel*, 782 F.2d at 1472, when defendants  
19 fail to answer the complaint, a decision on the merits is "impractical, if not impossible." *PepsiCo*  
20 *v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. Dec. 27, 2002). Entry of a default  
21 judgment, therefore, is appropriate.

### 22 **III. RECOMMENDATION**

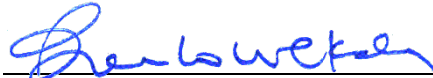
23 IT IS THEREFORE RECOMMENDED that Plaintiffs' Motion for Entry of Default  
24 Judgment (ECF No. 9) be GRANTED.

### 25 **IV. NOTICE**

26 This Report and Recommendation is submitted to the United States District Judge  
27 assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this Report and  
28 Recommendation may file a written objection supported by points and authorities within fourteen

1 days of being served with this Report and Recommendation. Local Rule IB 3-2(a). Failure to file  
2 a timely objection may waive the right to appeal the District Court's Order. *Martinez v. Ylst*, 951  
3 F.2d 1153, 1157 (9th Cir. 1991).

4  
5 DATED: January 6, 2020

6  
7 

8 BREND A WEKSLER  
9 UNITED STATES MAGISTRATE JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28